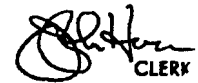


FILED**FEB 01 2012**
CLERKUNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TYLER BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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The Government has requested an Order Directing Former Defense Counsel to Respond to Defendant's Claims of Ineffective Assistance and further requests to be allowed fourteen (14) days after an affidavit is submitted to file its response to the Petitioner's Motion under 28 U.S.C. § 2255. Doc. 15. A Certificate of Service establishes that the Motion for Order Directing Former Defense Counsel to Respond to Defendant's Claims of Ineffective Assistance was served on defense counsel on January 3, 2012. Ordinarily, the attorney-client privilege belongs to and exists solely for the benefit of the client. *Henderson v. United States*, 815 F.2d 1189, 1192 (8th Cir.1987). However, the Eighth Circuit Court of Appeals has recognized that the privilege may be impliedly waived when a client attacks his attorney's competence and raises the issue of ineffectiveness or incompetence of counsel. *See Tasby v. United States*, 504 F.2d 332 (8th Cir. 1974). In addition, the ABA Model Rule of Professional Conduct 1.6 advises that a lawyer shall not reveal information relating to the representation of a client unless the client gives his informed consent, but further advises that the disclosure is impliedly authorized under certain circumstances including when a lawyer must respond to allegations in any proceeding concerning the lawyer's representation of the client. After consideration of the motion and file in this matter,

IT IS ORDERED:

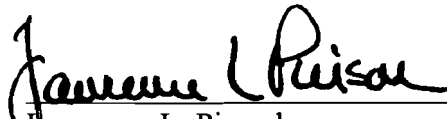
1. That if either Mr. Khorroosi or Petitioner resists an order directing Mr. Khorroosi to respond to the specific allegations concerning his representation of Petitioner by affidavit, either or both shall file a resistance within ten (10)

days of the date of this Order;

2. That if neither Mr. Khorroosi nor Petitioner resists an order directing Mr. Khorroosi to respond by affidavit to the specific allegations concerning his representation of Petitioner, Mr. Khorroosi shall provide the Government with such an affidavit within fifteen (15) days of the date of this Order; and
3. That the Government's Motion for a fourteen (14) day extension of time to respond is granted, and the Government shall have fourteen (14) days after Mr. Khorroosi provides his affidavit or this Court rules on any resistance within which to file a response to Petitioner's § 2255 Motion.

Dated this 1st day of February, 2012.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:


DEPUTY